IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6948 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PRABHUDAS VASANDAS KUBAVAT

Appearance:

1. Special Civil Application No. 6948 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/06/2003

ORAL JUDGEMENT

#. Rule. Mr.Paul waives service of rule for the respondent. With the consent of the parties, the matter

is taken up for final hearing today.

#. By filing this petition, the petitioner Corporation has challenged the award passed by the Presiding Officer, Labour Court, Rajkot dated 9.11.2001 in Reference No.LCR 299 of 1994. By the impugned award, the Labour Court has passed the order of reinstatement in favour of the respondent workman with 25% backwages.

#. At the time of issuance of notice, this Court has stayed the order of reinstatement on condition that the petitioner Corporation will comply with the provisions of Section 17-B of the Industrial Disputes Act (for short "Act"). At the time of hearing of this petition, it is argued by Mr.Dagli that in the facts and circumstances of the case, the respondent workman should not have been given any backwages worth the name. He submitted that, even the past record of the respondent workman is not upto the mark and that he had committed various misconducts even in the past. So far as the present award is concerned, the Labour Court has come to the conclusion that, the charge, which is proved against the respondent workman, is of negligence and the breach of some circulars of the Corporation. On appreciating the evidence, the Labour Court has come to the conclusion that this is not a case in which the respondent workman has misappropriated any amount. The Labour Court, thereafter, after exercising the powers under Section 11-A of the Act, has interfered with the order of punishment and has passed the order of reinstatement in favour of the respondent with 25% backwages.

#. At the time of hearing of this petition, learned advocates for both the sides have left to the Court the question about awarding appropriate punishment to the concerned workman. It is submitted by Mr.Dagli that this is not a case in which any backwages can be awarded to the respondent workman. It is, no doubt, true that while exercising the powers under Section 11-A of the Act, the Labour Court has interfered with the order of punishment by reinstating the concerned workman. However, considering the fact that the Labour Court itself has found that misconduct against the respondent in connection with negligence is already proved, in my view, this is not a case in which any backwages can be awarded to the petitioner. Mr.Paul has fairly conceded that he has no objection if the award of the Labour Court is modified accordingly.

#. Considering the facts and circumstances of the case and considering the fact that consensus between the

parties in connection with quantum of punishment is prevailing, the following order is passed:-

The impugned order of the Labour Court is modified by allowing this petition partly. The order of reinstatement is confirmed, however, so far as the order qua 25% backwages is concerned, the same is quashed and set aside. Effect of this order is that the respondent is entitled to reinstatement in service from the date of the order of the Labour Court and he will be entitled to the regular salary from the date of the award of the Labour Court, however, he will be subjected to the penalty of withholding of four increments with future effect instead of three increments with future effect awarded by the Labour Court. The respondent shall not be entitled to any backwages for the intervening period. The Corporation may pay difference of salary to the respondent in view of the aforesaid order by adjusting the amount which is already paid to the respondent towards the compliance of Section 17-B of the Act and whatever benefit, which is required to be given to the respondent, may be given to him within a period of two months from today. Rest of the award of the Labour Court is maintained. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)